

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Charis Jones	Team: Squad #4	CCRB Case #: 201911006	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 10/18/2019 3:48 PM	Location of Incident: Boerum Street and Graham Avenue	Precinct: 90	18 Mo. SOL 4/18/2021	EO SOL 12/3/2021	
Date/Time CV Reported Tue, 12/10/2019 9:00 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 12/26/2019 4:07 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Henry Daverin	00000	945645	090 PCT
2. An Officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Daniel Manetta	11047	956069	090 PCT
2. SGT Joseph Lodato	03131	948487	090 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Henry Daverin	Abuse: Lieutenant Henry Daverin stopped § 87(2)(b)	
B.LT Henry Daverin	Abuse: Lieutenant Henry Daverin stopped § 87(2)(b)	
C.LT Henry Daverin	Abuse: Lieutenant Henry Daverin frisked § 87(2)(b)	
D.LT Henry Daverin	Force: Lieutenant Henry Daverin used physical force against § 87(2)(b)	
E. An Officer	Abuse: An officer refused to provide his name to § 87(2)(b)	
F. An Officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	
G. An Officer	Abuse: An officer threatened to arrest § 87(2)(b)	
H.LT Henry Daverin	Discourtesy: Lieutenant Henry Daverin spoke discourteously to § 87(2)(b)	
I.LT Henry Daverin	Abuse: Lieutenant Henry Daverin failed to provide § 87(2)(b) with a business card.	
J.LT Henry Daverin	Abuse: Lieutenant Henry Daverin failed to provide § 87(2)(b) with a business card.	
§ 87(4-b), § 87(2)(g)		

Officer(s)	Allegation	Investigator Recommendation
§ 87(4-b), § 87(2)(g)		

Case Summary

On December 10, 2019, § 87(2)(b) called IAB and filed this complaint on her own behalf and on behalf of her brother § 87(2)(b) her brother's friend, § 87(2)(b) and her boyfriend § 87(2)(b) generating original log 19-43990. The CCRB received the log on December 26, 2019.

On October 18, 2019, at approximately 3:48 p.m., Lieutenant Henry Daverin of the 90th Precinct stopped § 87(2)(b) and § 87(2)(b) at the corner of Boerum Street and Graham Avenue in Brooklyn (**Allegations A and B: Abuse of Authority, § 87(2)(g)**). Lt. Daverin frisked § 87(2)(b) (**Allegation C: Abuse of Authority, § 87(2)(g)**). Lt. Daverin put § 87(2)(b) against the wall of a deli (**Allegation D: Force, § 87(2)(g)**). § 87(2)(b) allegedly asked for an unidentified officer's name and the officer did not provide it to him (**Allegation E: Abuse of Authority, § 87(2)(g)**). An unidentified officer allegedly told § 87(2)(b) to "get the fuck back or he would go too" (**Allegation F: Discourtesy, § 87(2)(g)**) (**Allegation G: Abuse of Authority, § 87(2)(g)**).

Sergeant Joseph Lodato, also of the 90th Precinct, was present. Lt. Daverin and Sgt. Lodato transported § 87(2)(b) back to the station house. Lt. Daverin spoke discourteously to § 87(2)(b) during the car ride (**Allegation H: Discourtesy, § 87(2)(g)**). § 87(2)(b) and § 87(2)(b) did not receive business cards as a result of this incident (**Allegations I and J: Abuse of Authority, § 87(2)(g)**).

§ 87(4-b), § 87(2)(g)

§ 87(2)(b) was arrested and charged with § 87(2)(b)

§ 87(2)(b) (Board Review 01).

The investigation obtained Lt. Daverin's and Sgt. Lodato's body-worn camera (BWC) footage and surveillance footage from the Express Deli and Tobacco store located at the corner of Boerum Street and Graham Avenue. The recordings captured this incident in its entirety (Board Review 02) (Board Review 03).

Findings and Recommendations

Allegation (A) Abuse of Authority: Lieutenant Henry Daverin stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Lieutenant Henry Daverin stopped § 87(2)(b)

Allegation (C) Abuse of Authority: Lieutenant Henry Daverin frisked § 87(2)(b)

§ 87(2)(b) (Board Review 04) testified that she, § 87(2)(b) and her friend § 87(2)(b) (last name unknown) went to a deli located at the corner of Boerum Street and Graham Avenue in Brooklyn. § 87(2)(b) and § 87(2)(b) went inside to purchase cigarettes. § 87(2)(b) and § 87(2)(b) waited outside. § 87(2)(b) and § 87(2)(b) exited the store and an unmarked vehicle made a U-turn and stopped in front of the deli. Lt. Daverin exited the vehicle and walked towards § 87(2)(b) and § 87(2)(b) § 87(2)(b) said, "Before you ask me any questions or anything, you got to turn your body cameras on. That's the only way you can talk to me." Lt. Daverin told § 87(2)(b) to move out of the way, walked around her, and approached § 87(2)(b) Lt. Daverin told § 87(2)(b) to lift his arms and § 87(2)(b) complied. Lt. Daverin searched § 87(2)(b) § 87(2)(b) did not provide any additional details about the search.

§ 87(2)(b) provided a phone statement to the investigation (Board Review 05). Lt. Daverin did not frisk or search § 87(2)(b) Lt. Daverin frisked and searched § 87(2)(b) however, § 87(2)(b) also did not provide details of the search.

The investigation was unable to locate § 87(2)(b) (Board Review 06).

Surveillance footage from the deli captured this portion of the incident (Board Review 03).

At 02:23, § 87(2)(b) and § 87(2)(b) enter the deli. § 87(2)(b) waits outside. From 02:40 to 03:48, § 87(2)(b) stands in the doorway of the deli. There is no visible civilian traffic on the sidewalk or going in and out of the deli. At 04:02, § 87(2)(b) and § 87(2)(b) exit the deli and stand with § 87(2)(b) on the sidewalk. They stand there and smoke cigarettes for approximately 30 seconds. At 04:42, Lt. Daverin and Sgt. Lodato approach. From 05:16 to 05:24, Lt. Daverin pats down § 87(2)(b)'s waist band area and both of his legs. From 05:24 to 05:57, Lt. Daverin walks towards § 87(2)(b). § 87(2)(b) walks away from Lt. Daverin and § 87(2)(b) steps between them.

Lt. Daverin's body-worn camera (Board Review 20), between 00:00 and 00:22, shows the following. Lt. Daverin says to § 87(2)(b) "I just want to make sure you don't have any weapons on you, bro." After Lt. Daverin frisks § 87(2)(b) he says, "Come here" and starts walking towards § 87(2)(b). § 87(2)(b) pushes her § 87(2)(b) out of the way. § 87(2)(b) Dealoatch tells Lt. Daverin that he is not going to search her § 87(2)(b) and tells Lt. Daverin not to push her. Lt. Daverin says, "Are you out of your mind?" § 87(2)(b) responds, "Don't push me bro."

Lt. Daverin (Board Review 07) testified that he was familiar with § 87(2)(b) and § 87(2)(b) prior to the incident. § 87(2)(b) is a "known 900 gang member" and was previously involved in a shooting a block away from the incident location. § 87(2)(b) is a "known Crip who is also associated with the 900." § 87(2)(b) was a confidential informant for the Police Department. On the day of the incident Lt. Daverin observed § 87(2)(b) and § 87(2)(b) walk Northbound on Boerum Street and Graham Avenue. Lt. Daverin immediately felt suspicious of § 87(2)(b) and § 87(2)(b) because of § 87(2)(b)'s history in the neighborhood and because the three of them were in "oppositional gang territory." Lt. Daverin made a U-turn and stopped at the corner of Boerum Street and Graham Avenue. § 87(2)(b) and § 87(2)(b) entered the deli and stood in the doorway, which blocked the flow of civilian traffic. Lt. Daverin exited his vehicle and approached § 87(2)(b) and § 87(2)(b). Lt. Daverin stopped § 87(2)(b) and § 87(2)(b) because they were blocking the deli's entrance and because of their "propensity for violence." Lt. Daverin explained that § 87(2)(b) had a past involvement in a shooting in 2018 and that § 87(2)(b) was on parole for gang assault. Lt. Daverin did not recall what § 87(2)(b) and § 87(2)(b) wore during the incident, other than beaded necklaces that showed their "gang colors." Lt. Daverin did not observe any bulges or objects on § 87(2)(b) or § 87(2)(b).

Lt. Daverin approached § 87(2)(b) and § 87(2)(b) and they became evasive by dodging in and out of the deli. This raised Lt. Daverin's level of suspicion further and he wanted to make sure they had no intention of committing crimes. § 87(2)(b)s, § 87(2)(b)s, and § 87(2)(b)s presence in the location made Lt. Daverin believe there was a chance that a violent crime could have occurred. Lt. Daverin spoke with § 87(2)(b) and then patted down his waistband area to ensure that he did not have any firearms on him. Lt. Daverin did not search § 87(2)(b). After he frisked § 87(2)(b) Lt. Daverin attempted to speak with § 87(2)(b). § 87(2)(b) stepped between Lt. Daverin and § 87(2)(b) and § 87(2)(b) was ultimately arrested for § 87(2)(b).

People v. Boulware, 130 A.D.2d 370 determined that founded suspicion of criminal activity arises only when there is some present indication of criminality based on observable conduct or reliable hearsay. An officer's mere unscientific guess as to a propensity to commit crimes... is simply insufficient to justify isolating that person from a group of people and making inquiry as to his conduct (Board Review 08).

NYPD Patrol Guide Procedure 212-11 outlines the various circumstances under which a member of the service may stop a civilian. A stop is any encounter between a civilian and a uniformed member of the service in which a reasonable person would not feel free to disregard the officer and walk away. A stop of a person may be conducted only when a police officer has an individualized reasonable suspicion that the person stopped has committed, is committing, or is

about to commit a felony or Penal Law misdemeanor. This procedure also explains that a frisk is authorized when an officer reasonably suspects the person is armed and dangerous. A frisk may not be conducted to discover evidence or the proceeds or instrumentalities of a crime (Board Review 09).

§ 87(2)(g)

Lt. Daverin frisked § 87(2)(b) because he had previously been involved in a shooting and was in a neighborhood of oppositional gang territory, and Lt. Daverin wanted to make sure § 87(2)(b) did not have any weapons. Lt. Daverin did not observe any bulges on § 87(2)(b) and he did not indicate any specific threat to his safety. Lt. Daverin did not express any reason to believe § 87(2)(b) was armed beyond the aforementioned previous shooting and because § 87(2)(b) was in a neighborhood that Lt. Daverin considered to be oppositional territory. § 87(2)(g)

§ 87(2)(g)

Allegation (D) Force: Lieutenant Henry Daverin used physical force against § 87(2)(b)

§ 87(2)(b) (Board Review 04) stated that after Lt. Daverin searched § 87(2)(b) § 87(2)(b) walked towards the crosswalk. Lt. Daverin approached § 87(2)(b) from behind and pushed her left shoulder towards the street. Lt. Daverin then grabbed the front left side of § 87(2)(b)'s robe, pulled her back onto the sidewalk, and slammed her face-first against the side of the deli. Lt. Daverin handcuffed § 87(2)(b) and transported her to the 90th Precinct stationhouse.

§ 87(2)(b) (Board Review 05), who provided a phone statement, stated that § 87(2)(b) pushed her arm into Lt. Daverin as she walked towards the crosswalk.

Surveillance footage from the deli captured this portion of the incident (Board Review 03). From 05:24 to 05:57, Lt. Daverin walks towards § 87(2)(b) § 87(2)(b) walks away from Lt. Daverin and § 87(2)(b) steps between them. Lt. Daverin attempts to walk around § 87(2)(b) and § 87(2)(b) blocks him from doing so. Lt. Daverin grabs § 87(2)(b)'s arm, and puts her against the wall of the deli. The footage does not capture Lt. Daverin handcuffing § 87(2)(b). At 05:50, Lt. Daverin walks § 87(2)(b) who is handcuffed, towards his vehicle.

Sgt. Lodato's BWC is generally consistent with the surveillance footage and shows the physical interaction between Lt. Daverin and § 87(2)(b) in more detail (Board Review 02). Between 00:20 and 00:28, Lt. Daverin reaches for § 87(2)(b) and § 87(2)(b) moves away. § 87(2)(b) stands between the two of them and starts to walk away with § 87(2)(b). Lt. Daverin follows them. § 87(2)(b) pushes Lt. Daverin's right arm with her left arm.

Lt. Daverin (Board Review 07) testified that he attempted to speak with § 87(2)(b) § 87(2)(b) stepped between Lt. Daverin and § 87(2)(b). Lt. Daverin tried to go around § 87(2)(b) and § 87(2)(b) put her forearm into the right side of Lt. Daverin's body. Lt. Daverin then put § 87(2)(b) against the wall of the deli and handcuffed her because she obstructed governmental administration by blocking his path. Lt. Daverin did not use any other force against § 87(2)(b) aside from placing her against the wall and putting her into handcuffs. At that point, civilians gathered around and § 87(2)(b) screamed profanities. Lt. Daverin and Sgt. Lodato transported § 87(2)(b) to the 90th Precinct stationhouse.

NYPD Patrol Guide Procedure 221-01 states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody (Board Review 10).

It is undisputed that § 87(2)(b) pushed Lt. Daverin and that Lt. Daverin then pushed § 87(2)(b) against a wall and handcuffed her. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (E) Abuse of Authority: An officer refused to provide his name to § 87(2)(b)

Allegation (F) Discourtesy: An officer spoke discourteously to § 87(2)(b)

Allegation (G) Abuse of Authority: An officer threatened to arrest § 87(2)(b)

§ 87(2)(b) (Board Review 11) testified that he arrived at the incident location when § 87(2)(b) was being handcuffed by Lt. Daverin. Additional plainclothes officers were also present. § 87(2)(b) yelled to the officers, “Are you a sergeant? Who are you? Identify yourself.” An officer told § 87(2)(b) to “get the fuck back before you [he] goes.” § 87(2)(b) asked the officers what Precinct they were from and they told him to “mind his business.” § 87(2)(b) described this officer as a white male with gray and black hair, a gold shield, and a black sweater with a vest over it

The surveillance footage and the BWC footage obtained by the investigation captured the incident from beginning to end. The footage does not show § 87(2)(b) to be present at any point during the incident (Board Review 02) (Board Review 03) (Board Review 04).

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (H) Discourtesy; Lieutenant Henry Daverin spoke discourteously to § 87(2)(b)

The above allegations were captured in the BWC recordings and were not alleged by § 87(2)(b)

Sgt. Lodato’s BWC, from 01:57-02:00, shows § 87(2)(b) being transported to the 90th Precinct stationhouse (Board Review 03). § 87(2)(b) asks Lt. Daverin what she was being arrested for. Lt. Daverin responds, “Because you want to act like an asshole.” At 02:35, Lt. Daverin says to § 87(2)(b) “You want to act like that and cause me a problem? No fucking sweat.”

Lt. Daverin (Board Review 07) acknowledged making the above statements. Lt. Daverin made these statements because, “Her actions were obviously preventing me from what I was trying to do...because she was a CI [confidential informant] she felt like she could do whatever she chose to in the street and those were the words I used.”

While officers are permitted to use profanity during stressful street encounters, they are not permitted to use profanity in situations in which the profanity serves “no legitimate purpose but to belittle” the civilian. (PD v. Pichardo, DAO DCT Case Number 2015-15012) (Board Review 12)

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (I) Abuse of Authority: Lieutenant Henry Daverin failed to provide a RTKA card to § 87(2)(b)

Allegation (J) Abuse of Authority: Lieutenant Henry Daverin failed to provide a RTKA card

to § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) did not receive business cards from Lt. Daverin.

Lt. Daverin testified (Board Review 07) that he always carries business cards. Lt. Daverin did not provide business cards to § 87(2)(b) or § 87(2)(b) because they did not request them and did not think the circumstance allowed for that exchange.

NYPD Patrol Guide Procedure 203-09 requires officers to carry pre-printed Right To Know Business Card (RTKA) to distribute upon conclusion of law enforcement activities, except in cases when a summons is issued or an arrest is made, or exigent circumstances are present (i.e., physical resistance, flight, imminent danger of physical injury or damage to property, or other factors make such procedure impractical (Board Review 13).

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 15).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 16).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 17).
- Lt. Daverin has been a member-of-service for 12 years and has been the subject in 25 cases and 78 allegations, four of which were substantiated.
 - 201502623 involved substantiated allegations of a frisk, refusal to provide name/shield number, and a vehicle search. The Board recommended Command Discipline A and the NYPD imposed Discipline A. In this complaint, the victim did not allege the frisk. However, Lt. Daverin testified that he frisked the victim for weapons because he feared for his safety. § 87(2)(g)
 - This allegation was substantiated and Lt. Daverin received Command Discipline A.
 - 201604699 involved a substantiated allegation of an entry and/or search. The Board recommended Command Discipline B and the NYPD did not impose any disciplinary action.

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation.
- § 87(2)(b) (Board Review 18)
- § 87(2)(b) (Board Review 19).
- On April 7, 2020, a Notice of Claim FOIL request was sent to the New York City Comptroller's office. The results will be added to the case file upon receipt.

Squad No.: 4

Investigator: Charis Jones Inv. Charis Jones 06/08/2020
Signature Print Title & Name Date

Squad Leader: Raquel Velasquez IM Raquel Velasquez 06/08/2020
Signature Print Title & Name Date

Reviewer: _____

Signature Print Title & Name Date